



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNSDS-DR

Introduction

This hearing occurred by conference call based on an Application for Dispute Resolution filed by the Tenant December 20, 2022 (the “Application”). The Tenant applied for return of their security deposit.

This matter came before me March 16, 2023, and an Interim Decision was issued March 20, 2023. The Interim Decision should be read with this Decision.

The Tenant and Landlord appeared at the second hearing. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

Both parties provided further evidence after the first hearing. Service was an issue at the first hearing. At the second hearing, the Landlord confirmed receipt of the hearing package and Tenant’s evidence. The Tenant confirmed receipt of the Landlord’s evidence.

The parties were given an opportunity to present relevant evidence and make relevant submissions.

Issues to be Decided

1. Is the Tenant entitled to return of the security deposit?

Background and Evidence

The Tenant provided a written tenancy agreement between the parties and the Landlord agreed it is accurate.

The parties agreed the Tenant paid a \$275.00 security deposit and that the Landlord still has this.

In the first hearing, the parties disagreed about whether and when the Tenant provided the Landlord with their forwarding address in writing.

The first hearing was adjourned to allow both parties to submit further evidence. The Tenant was given a deadline to serve the hearing package and “all of their evidence” on the Landlord.

For the second hearing, the Tenant provided an email dated October 15, 2022, showing they emailed their forwarding address to the Landlord.

The Landlord said they did not get a copy of the October 15, 2022 email and had still never seen this email or the forwarding address provided in it. The Tenant had not served a copy of the October 15, 2022 email on the Landlord.

The Landlord said the first time they received the Tenant’s forwarding address was March 26, 2023, with the Application.

Analysis

Under section 38(1) and 39 of the *Act*, the Tenant must provide the Landlord their forwarding address in writing to get the security deposit back. Providing the forwarding address is what triggers the Landlord’s obligations in relation to returning the security deposit or filing a claim against it. Without having provided a forwarding address to the Landlord in writing, the Tenant cannot get their security deposit back.

Here, the parties disagreed at the first hearing about whether and when the Tenant provided the Landlord with a forwarding address in writing. The matter was adjourned to give both parties a chance to provide further evidence. The Tenant did provide the October 15, 2022 email to the RTB but did not serve it on the Landlord as required by rule 3.14 of the Rules and as ordered in the Interim Decision.

The October 15, 2022 email is excluded under rule 3.17 of the Rules because it was not served on the Landlord and it would be unfair to consider it when the Landlord says they have never seen it.

In the absence of the October 15, 2022 email, I am not satisfied the Tenant has provided the Landlord with their forwarding address in writing such that the Tenant is entitled to return of the security deposit. Section 38(1) of the *Act* has not been triggered and the Landlord has not yet been required to return the security deposit or file a claim against it.

The Tenant providing their forwarding address with or on the Application is not enough, the Tenant had to provide their forwarding address to the Landlord before filing the Application.

Given the above, the Tenant must provide the Landlord with their forwarding address in writing. This can be provided to the Landlord by email at the email address on the Application because the Landlord confirmed they could receive this Decision at that email address and, based on this Decision, should expect to receive the Tenant's forwarding address at this email address. Once the Landlord receives the Tenant's forwarding address in writing, the Landlord must comply with section 38(1) of the *Act*. If the Landlord does not comply with section 38(1) of the *Act*, the Tenant can re-apply for return of the security deposit.

The Application is dismissed with leave to re-apply. The Tenant can re-apply for return of the security deposit if the Landlord does not comply with section 38(1) of the *Act* after receiving the Tenant's forwarding address in writing.

Conclusion

The Application is dismissed with leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: April 18, 2023

Residential Tenancy Branch